



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 10 2008

Steven Salky, Esq.
Zuckerman Spaeder, LLP
1800 M Street, N.W., Suite 1000
Washington, DC 20036

RE: MUR 5379
Heriberto Valdes

Dear Mr. Salky:

On August 19, 2008, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Gould".

Jack Gould
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Heriberto Valdes

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MUR 5379

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint filed by Ryan Hampton. An investigation was conducted and the Federal Election Commission ("the Commission") found probable cause to believe that Heriberto Valdes violated 2 U.S.C. § 441b(a).

NOW, THEREFORE, the Commission and Heriberto Valdes ("Respondent"), having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

- I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding.
- II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondent enters voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:
 1. Heriberto Valdes was, at all relevant times, Vice President and Chief Operating Officer of CarePlus Medical Centers, Inc. ("CPMC").
 2. CPMC is a corporation within the meaning of 2 U.S.C. § 441b(a).
 3. Miguel B. Fernandez was, at all relevant times, President and Chief Executive Officer of CPMC.

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Applicable Law

4. The Federal Election Campaign Act of 1971, as amended ("the Act"), makes it unlawful for corporations to make contributions or expenditures in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a). Corporate officers and directors are prohibited from consenting to such contributions or expenditures. *Id.* The terms "contribution" and "expenditure" include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in" Section 441b. 2 U.S.C. § 441b(b)(2).

5. Because corporations can only act through their agents, officers, and directors, corporations are held liable for the actions of their officers committed within the scope of employment.

6. The Act's prohibition on corporate contributions includes facilitating the making of contributions to candidates or political committees. 11 C.F.R. § 114.2(f)(1). Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any Federal election. *Id.* Examples of facilitating the making of contributions include, but are not limited to: fundraising activities by corporations that involve officials or employees of the corporation ordering or directing subordinates or support staff to plan, organize or carry out a fundraising project as a part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services, and using coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee. 11 C.F.R. § 114.2(f)(2).

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Facts

7. Alex Penelas, Mayor of Miami-Dade County, Florida ("Mayor Penelas"), was a candidate for the U.S. Senate from Florida during the 2004 election cycle. Mayor Penelas' principal campaign committee was "Alex Penelas US Senate Campaign" ("the Penelas Committee").

8. In early 2003, Mr. Fernandez asked CPMC's Vice President, Heriberto Valdes, to assist him in raising funds for Mayor Penelas' campaign.

9. Mr. Valdes contends that at the time Mr. Fernandez asked him to assist him in raising funds for the Penelas campaign, Mr. Valdes had no prior experience in political fundraising and had never made any contribution to any person running for federal office.

10. On March 24, 2003, Mr. Valdes, acting within the course and scope of his employment as Vice President of CPMC, sent an e-mail directed to administrators of CPMC's patient care centers that stated the following:

The following is directed to all physicians and executive level staff at CarePlus Medical Centers Inc. Mr. Michael B. Fernandez, owner and Chief Executive Officer of CarePlus Medical Centers Inc. is asking for your help.

Alex Penelas, Dade County Mayor and strong supporter of Mike Fernandez and CarePlus Medical Centers is running for United States Senate. He has been working closely with Mr. Mike Fernandez and other community leaders to effect change in the indigent care programs that could represent opportunities for companies like ours to increase revenue while serving our indigent population and providing alternatives other than Jackson Memorial Health Systems.

Mr. Mike Fernandez is asking each of you for a \$1,000.00 campaign contribution for the Alex Penelas for Senate Campaign. The deadline for this contribution is Friday the 28th. He has asked for an accounting of the individuals that donate and those that did not. He will be contacting the individuals that donate to thank you personally. I am sure you are probably wondering why Mike Fernandez does not make the contribution himself. I am sure he would if he could. It would be illegal, as individual maximum allowable contributions are \$2,000.00. As painful as this may seem, it will not be any easier tomorrow so pull out your checkbooks and write the check

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today to the order of Alex Pinelas [sic] for Senate and the check must be dated April 2, 2003 or later.

All physicians, large vendors and executive level staff will be expected to donate. The center administrator has been assigned to collect and submit the contributions to Ed Rubio, Director of Operations.

11. The Commission has concluded that the e-mail was coercive within the meaning of 11 C.F.R. § 114.2(f)(2)(iv) and that contributions received in response to a solicitation with language like this are considered to have been made involuntarily. Respondent contends that this was not the intent of the e-mail.

12. After sending the e-mail, Mr. Valdes initiated further discussion at CPMC about fundraising for Mayor Penelas' campaign, and requested other management-level staff under his supervision to assist with the fundraising activities. The Penelas campaign was discussed during meetings with Administrators and "Physicians-In-Charge" at the company's corporate offices. Some of the Administrators also handed out copies of Mr. Valdes' e-mail to doctors. Ultimately, a number of physicians and administrators contributed to the campaign. All checks written by CPMC employees were subsequently returned.

V. Heriberto Valdes violated 2 U.S.C. § 441b(a) by consenting to CarePlus Medical Center, Inc.'s facilitating the making of contributions to the Alex Penelas US Senate Campaign.

VI. 1. Heriberto Valdes will pay a civil penalty to the Federal Election Commission in the amount of Five Thousand Five Hundred Dollars (\$5,500) pursuant to 2 U.S.C. § 437g(a)(5).

2. Respondent will cease and desist from violating 2 U.S.C. § 441b(a).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof

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has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.


IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Thomasenia P. Duncan
General Counsel

BY:


Ann Marie Terzaken
Associate General Counsel
for Enforcement

Date

9/10/08

FOR THE RESPONDENT:

(Name and Title)

C.O.O.

CAC: Florida Medical Centers LLC.

Date

4/3/08

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